

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
v.)	Crim. No. 13-10200-GAO
)	
DZHOKHAR A. TSARNAEV,)	<u>UNDER SEAL</u>
Defendant)	

GOVERNMENT’S MOTION IN LIMINE TO EXCLUDE DIGITAL EVIDENCE

The United States of America, by and through its undersigned counsel, respectfully moves in limine to exclude the following digital evidence.

A. Katherine Tsarnaeva internet search history

Exhibit 3303-007A and 3303-07B are excerpts from the internet search history on Katherine Tsarnaeva’s MacBook Pro computer. Exhibit 3303-007B reflects searches made shortly before Tamerlan Tsarnaev traveled to Russia. It includes a search using the phrase “rewards for wife of mujahideen.” Exhibit 3303-007A reflects searches made shortly after Tamerlan Tsarnaev traveled to Russia. It includes a similar search phrase, as well as searches for using the phrases “nasheed jihad” and “can women become shaheed.”

The government moves in limine to exclude this evidence as irrelevant, confusing, and misleading. Neither Katherine Tsarnaeva nor anyone else will offer testimony about the meaning or significance of the searches. Although the searches could reflect knowledge that Tamerlan Tsarnaev was traveling to Russia in hopes of becoming a mujahid, they could also simply reflect Tsarnaeva’s unfounded belief that this was the case, or her hope for it, or her fear of it, or pure speculation about it. The searches could also have been merely a way to pass the time. Their admission will necessarily require the jury to speculate about an important matter. Absent a foundation for their relevance, which will not be laid, the evidence is irrelevant and

likely to mislead the jury and confuse the issues.

B. Voice recordings purportedly of Tamerlan Tsarnaev and unidentified others.

Exhibit 3306-04 is a chart reflecting six voice recordings found on Tamerlan Tsarnaev's Samsung laptop computer. The recordings themselves, which are in Russian, can be found at "3300 Exhibits\3306 FILES SAMSUNG 1W3\folders and files\TC Document\pcm recorder," and written translations can be found at "3300 Exhibits\3306 FILES SAMSUNG 1W3\Translations."

The government moves to exclude this evidence because of its potential to mislead and confuse the jury. The recordings are extremely difficult to understand even in translation. They appear to consist of several men talking about religious issues, including the proper form in which to do jihad, which can be violent or non-violent depending on one's religious philosophy. The recordings appear to have been made while Tamerlan Tsarnaev was in Russia. Presumably, the defense will have someone identify one of the voices as Tamerlan Tsarnaev's. But the defense apparently will not be able to identify any of the other voices or provide any context whatsoever for the discussions.

These translations run the risk of misleading jurors into believing that Tamerlan Tsarnaev was a part of a terrorist cell in Russia. But the conversations in fact reflect the very opposite. The participants discuss the futility of terrorism and inveigh against it. But a juror unfamiliar with Islamic teaching or euphemisms like "going into the forest" would have no way of knowing that and could easily come to the opposite conclusion. In short, to merely offer these translations into evidence and read them to the jury without any foundation or context runs a substantial risk of confusing and misleading them without proving anything that justifies the risk; they should therefore be excluded.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document will be served by electronic mail on Dzhokhar Tsarnaev's attorney, Judy Clarke, Esq., on December 29, 2014.

/s/ Steven D. Mellin
STEVEN D. MELLIN